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IN THE

Supreme Court of the United States

OCTOBER TERM, 1970

No. 1223

KARL H. MEYER,

Petitioner,

vs.

CITY OF CHICAGO, a Municipal Corporation,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS

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PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS

Petitioner prays that a writ of certiorari issue to review the judgment of the Illinois Supreme Court entered in the above case on November 26, 1969 insofar as that decision affirms petitioner's conviction under Section 11-33, of the Municipal Code of Chicago. No petition for rehearing was filed.

OPINION BELOW.

The decision of the Illinois Supreme Court is reported at 44 Ill. 2d 1 (1969), and is set out in full as an appendix to this petition.

THE RECORD.

A certified copy of the record below has been filed in this Court.

JURISDICTION.

This petition is presented for review of the judgment of the Illinois Supreme Court entered on November 26, 1969. The jurisdiction of this Court is invoked under 28 U.S.C. Section 1257.

QUESTIONS PRESENTED.

Whether a speaker on a public issue who is peaceful:

1. May be prevented from speaking because of the hostile actions of his audience?

2. May be subjected to conviction under an *ex post facto* construction of an ordinance: conviction for failure to obey a police officer where the ordinance under which petitioner was convicted did not proscribe "failure to obey" at the time of his charge and conviction?

3. May be convicted of interference with a police officer for failing to obey an order to stop speaking on a public issue where there is no record evidence of any interference?

4. May be convicted under an ordinance which fails to give adequate notice of whether petitioner's conduct is proscribed, leaves unfettered discretion in the police of whether the petitioner's conduct is unlawful, and permits conviction for speech entitled to First Amendment protection?

MUNICIPAL ORDINANCES AND CONSTITUTIONAL PROVISIONS INVOLVED.

Municipal Code of Chicago, Section 11-33.

Any person who shall resist any officer of the police department in the discharge of his duties, or shall in any way interfere with or hinder or prevent him from discharging his duty as such officer, or shall offer or endeavor to do so, and whoever shall in any manner assist any person in the custody of any member of the police force to escape or attempt to escape from such custody, or attempt to rescue any person in custody shall be fined not less than Ten nor more than One Hundred Dollars for each offense.

United States Constitution, First Amendment.

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof, or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

United States Constitution, Fourteenth Amendment.

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT.

Petitioner, who wanted to "communicate to the public in Chicago some ideas about the Viet Nam War," held a "Viet Nam Forum". (R. 11, 35) The forum, which was held on several Friday and Saturday nights in June and July, 1967, was an open forum in which anyone was allowed to speak. (R. 39) The forum was held on the public sidewalk in an area of Chicago known as "Old Town", a busy night-time area. (R. 11)

On July 14, 1967, the night in question, the forum began about 8:45 p.m. Petitioner stood on a 5-gallon can and began his talk. (R. 12) There was a large sign behind petitioner and there was a shopping cart filled with pamphlets next to him. (R. 12) Four or five of his associates also spoke and distributed the pamphlets. (R. 13) A crowd of about 100 to 200 persons gathered. (R. 15, 35) The sidewalk was obstructed and pedestrians walked into the street to get around the group.[1] (R. 15, 31) About 11:00 p.m. the crowd had become loud and boisterous, (R. 31) although petitioner's conduct always remained peaceful. He never used any "fighting words." However, several servicemen in uniform argued with petitioner and his friends about the policy in Viet Nam. (R. 36) One of petitioner's associates reported a fight in the crowd to a police officer present. (R. 15) Two

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[1] Petitioner had attempted to use an adjacent schoolyard as the site of his forum, but the Chicago Board of Education denied his request to use the schoolyard in the evening, on the ground that the light was inadequate and the yard was intended for playground purposes. (R. 38)

spectators tore down the sign and a person sympathetic to petitioner picked it up. (R. 16, 17, 40) A fight was about to ensue over this incident when a police officer appeared and calmed the situation. (R. 17, 41) Some spectators then set fire to some leaflets. (R. 42) The police then dispersed the troublemakers. (R. 17) Petitioner resumed speaking to the remaining 20-30 persons (R. 33) "rather quietly about the ideas that we held, particularly about what the people in Viet Nam, that I had talked to, felt." (R. 43) The police ordered petitioner to move also. (R. 33) Petitioner remained on the can and said: "I will not leave. You can arrest me if you please." (R. 33) Petitioner later testified that the reason he stayed was that he believed "that we had the right to make use of this forum . . . under the right of public assembly." (R. 44) According to the police, when told he was under arrest, petitioner walked to the squad car without protest or incident. (R. 34)

Petitioner was charged with violation of Section 11-33 ("interfering with a police officer") and Section 193-1 ("disorderly conduct") of the Municipal Code of Chicago. At trial, petitioner chose to represent himself, waived a jury and cross examination of the City's witnesses, and put in his own defense.

The court found petitioner guilty on both charges, and held (R. 54):

> "The Court:
>
> By his own testimony and his own admission, the defendant admits he was asked to leave, and he decided not to leave. He asked to be arrested instead.
>
> By his own admission, he got back onto this can—whatever it was—and kept on talking. It is the considered opinion of this Court that defendant is guilty. . . ."

In his post trial motions petitioner claimed that his conduct was constitutionally protected and that he was denied a fair trial. (R. 23) The motions were denied. (R. 23) Judgment was entered on the finding and petitioner was fined $100.00 on the "interfering" charge (Sec. 11-33) and $200.00 on the "disorderly conduct" charge. (Sec. 193-1)

On review, the Illinois Supreme Court reversed the conviction for "disorderly conduct" (Sec. 193-1) but affirmed the conviction for 'interfering" (Sec. 11-33). The Court held that petitioner's speech was producing an imminent threat of uncontrollable violence or riot, even though the record shows that the situation had been calmed and the troublemakers had been dispersed. The Court rejected petitioner's contentions that the arrest and conviction under Section 11-33 violated his rights of free speech and free assembly and that the "interfering" ordinance is unconstitutionally vague and overbroad.

Petitioner seeks review of the Illinois Supreme Court decision insofar as it affirms the conviction under Section 11-33.

REASONS FOR GRANTING THE WRIT—IMPORTANT CONSTITUTIONAL QUESTIONS INVOLVED, AND CONFLICT WITH IMMEDIATE PRIOR DECISIONS OF THIS COURT ON THE SAME POINT.

The Speaker Versus the Hostile Audience.

This case again presents the important First Amendment issue whether a peaceful speaker may be prevented from speaking because of the hostile actions of his audience. The decision of the Illinois Supreme Court is that "the police may order the cessation of otherwise lawful [conduct] where they have made all reasonable efforts to maintain order, but the [conduct] is producing an imminent threat of uncontrollable violence or riot." (App. p. 4a) This is the same ground rejected by this Court in *Gregory* v. *City of Chicago*, 394 U.S. 111 (1969). Now, the Illinois Court has reached the same conclusion by a different, but no less unsupportable route.

The Illinois Court's decision fails to give adequate recognition to the City's "obligation to protect petitioner's constitutional right to talk", *Feiner* v. *New York*, 340 U.S. 315, 326 (1950) (Black, J. dissenting), and gives the police "discretion to silence him as soon as the customary hostility to his views develops." *Id.*, at 329; cf. *Gregory* v. *Chicago*, *supra* at 122 (Black, J. concurring).

The Illinois Court's position is contrary to past decisions of this Court protecting free speech against crowd hostility:

In *Watson* v. *City of Memphis*, 373 U.S. 526, 535 (1963), quoted with approval in *Cox* v. *Louisiana*, 379 U.S. 536, 551 (1965) this Court held that "constitutional rights may not be denied simply because of the hostility to their assertion or exercise."

In *Wright* v. *Georgia*, 373 U.S. 284, 293 (1963) this Court held that "the possibility of disorder by others cannot justify exclusion of persons from a place if they otherwise have a constitutional right to be present." Defendant had a right to be where he was.

In *Gregory, supra,* this Court held that the violent and hostile actions of a rock-throwing, obscenity-shouting mob of 1200 persons could not justify demonstrators' disorderly conduct convictions where the record showed no disorderly conduct on the part of the peaceful demonstrators.

Taken together these decisions establish that a peaceful speaker may not be silenced, excluded, or convicted because of the hostility or violence of his audience. Yet such silencing, exclusion and conviction is precisely what was visited upon petitioner in this case, and these actions were approved by the Illinois Supreme Court. These and similar actions will continue to be approved in Illinois so long as that Court's decision and its rule justifying suppression of speech by the "hostile audience" stands.[1]

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[1] It is noteworthy that, while the Illinois Court (App., p. 4a) purports to adhere to the view expressed in that Court's *Gregory* opinion, the "hostile audience" standard employed by the Illinois Court in this case offers even less protection to First Amendment rights than that employed in *Gregory* in that (1) the current standard requires that the police make all reasonable efforts to maintain order whereas the *Gregory* standard required the police to make all reasonable efforts to protect the speaker and (3) the current standard fails to include the requirement that the police explain to the speaker the request that he cease speaking. Cf. *Feiner* v. *New York*, 340 U.S. 315, 327 (Black, J. dissenting), "[A] man making a lawful address is certainly not required to be silent merely because an officer directs it. Petitioner was entitled to know why he should cease doing a lawful act. Not once was he told." Petitioner was not told why he should stop talking.

Conviction for Actions Not Prohibited at the Time of Their Commission.

This case presents the problem of the retroactive application of a judicial enlargement of a proscriptive ordinance.

In *Bouie* v. *Columbia*, 378 U.S. 347 (1964) this Court held that persons conducting a sit-in could not be convicted of remaining on store premises after being asked to leave where the statute under which they were charged prohibited only entrance on the premises after notice from the owner prohibiting such entry, but did not prohibit staying after being asked to leave. This Court further held the South Carolina Supreme Court's attempt to apply to the demonstrators retroactively a judicial construction enlarging the statute to cover defendants' actions deprived them of the fair warning guaranteed by the Due Process Clause.

In *Gregory* v. *City of Chicago*, 394 U.S. 111 (1969) where the Illinois Supreme Court had construed the Chicago disorderly conduct ordinance to prohibit failure to obey a police order to disperse even though the ordinance did not define disorderly conduct as "refusal to obey", this Court reversed defendants' convictions, holding (at 112) that "it is as much a denial of due process to send an accused to prison following conviction for a charge that was never made as it is to convict him upon a charge for which there is no evidence to support that conviction."

These principles are controlling on the instant case and require reversal. Defendant's speech took place in July, 1967. He was tried the same month. The Illinois Court's construction of Section 11-33 was not announced until more than two years later, in November, 1969.

Moreover, the only possible basis on which such construction might have been foreseen—the Illinois Court's construction of the Chicago disorderly conduct ordinance—was not announced until January, 1968, six months after petitioner committed the acts in question.(1)

The "crime" for which petitioner stands convicted was not enumerated in the ordinance at the time of his conduct. It follows that he has been denied due process of law, and the conviction should be reversed.

The Record Is Devoid of Any Evidence to Support the Conviction.

This case presents the due process issue whether a person may be lawfully convicted of an offense for which the record is totally devoid of evidentiary support. In *Thompson* v. *City of Louisville,* 362 U.S. 199 (1960), this Court held that such a conviction violates due process. In *Gregory* v. *City of Chicago,* 394 U.S. 111 (1969), this Court held that conviction of defendant demonstrators for disorderly conduct, when there was no evidence that the demonstrators' conduct was disorderly, violated due process.

In the instant case defendant was charged and convicted under an ordinance which makes it an offense to interfere with a police officer in the discharge of his duty. Yet there is absolutely no evidence of such interference on petitioner's part. The same conclusions hold true under the ordinance as construed by the Illinois Supreme

(1) In March, 1968, eight months after defendant's speech, failure to obey a police order under the conditions laid down in the Illinois Court's *Gregory* opinion was made "disorderly conduct" by the City's enactment of a new disorderly conduct ordinance. See Sec. 193-1(c) Municipal Code of the City of Chicago, enacted March 26, 1968.

Court in that there is no evidence of "an imminent threat of uncontrollable violence or riot." On the contrary, as the Illinois Court recognized (App. p. 2a), at the point of petitioner's arrest, the situation had been calmed and the police had dispersed the persons opposing the petitioner. But whether there was a threat from the crowd or not, there was no act of "interference" by petitioner. The decision of the Illinois Court is therefore in conflict with *Thompson* and *Gregory* and should be reversed.

Conviction Under Overbroad Ordinance.

This case presents the problem of overbreadth. Specifically, (1) petitioner was found guilty in the trial court under the literal language of the ordinance (not the subsequently-announced Illinois Supreme Court's construction of it), and (2) the ordinance is overbroad: it brings within its broad scope acts clearly entitled to First Amendment protection. *Brown* v. *Louisiana,* 383 U.S. 131, 144 (1966), (Brennan, J. concurring), *Garner* v. *Louisiana,* 368 U.S. 157, 186 (1961), (Harlan, J: concurring). Thus, under the ordinance, it is a violation if a person interferes or offers to interfere with a police officer, without standards for what that means, and without any requirement that there be actual interference. Under this broad, indefinite prescription, one could be convicted for innocent interference by inaction or speech. And, indeed, the record (R. 54) shows that it was for his speech—the fact that he continued to speak after being told to stop—that petitioner was convicted.

Under these circumstances, it is apparent that petitioner was convicted for speech clearly entitled to First Amendment protection and that under the principle established in *Stromberg* v. *California,* 283 U.S. 359

(1931) and followed in *Terminiello* v. *Chicago*, 337 U.S. 1 (1949), *Shuttlesworth* v. *Birmingham*, 382 U.S. 87 (1965) and *Gregory* v. *City of Chicago*, 394 U.S. 111 (1969), this Court should grant certiorari and reverse.

The Chicago Ordinance Is Unconstitutionally Vague.

This case also presents the problem of vagueness: petitioner was charged, tried and convicted under a vague ordinance. The ordinance is vague because it failed to give petitioner fair notice of whether his conduct was proscribed, *Winters* v. *New York*, 333 U.S. 507 (1948), because it gave the police unfettered discretion to decide whether and at what point petitioner's conduct became illegal, *Cox* v. *Louisiana*, 379 U.S. 536 at 579 (1965) (Black, J. concurring) and because it failed to provide adequate standards for court and jury to decide the legality of petitioner's conduct. Under these circumstances, petitioner was denied due process and this Court should grant certiorari to vindicate these basic rights.

CONCLUSION.

For the reasons set out above, petitioner asks this Court to grant review and to reverse the Court below.

Respectfully submitted,

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APPENDIX

Opinion of the Supreme Court of Illinois

Docket No. 41117—Agenda 25—May, 1969.

THE PEOPLE OF THE CITY OF CHICAGO, Appellee, *vs.* KARL MEYER, Appellant.

Mr. JUSTICE KLUCZYNSKI delivered the opinion of the court:

Karl Meyer appeals from a conviction of disorderly conduct and interfering with an officer in the discharge of his duties under chapters 193—1 and 11—33, respectively, of the Municipal Code of Chicago. He was find $200 on the first charge and $100 on the second charge. A constitutional question gives us jurisdiction.

At his trial defendant, who had funds to retain counsel, chose to represent himself, refused appointed counsel, waived a jury and cross-examination of the City's witnesses and put in his own defense. He testified that he wanted to "communicate to the public in Chicago some ideas about the Viet Nam war." He first selected as his site for his "Viet Nam Forum" a school yard located in an area known as "Old Town". However, the Chicago Board of Education denied his request to use the school yard on every Friday and Saturday evening in July and August because the light was inadequate and the yard was intended for playground purposes. When defendant and his associates arrived at the school yard on June 30 an attorney from the school board informed them that they could not use the school yard. They then moved their table, literature and banners on to the side-

walk. A police officer told them they could not erect a table and chairs on the sidewalk. Defendant testified: "So we took down the tables and chairs and proceeded to speak there, and we held the forum that night. And there wasn't any trouble, and there were a lot of officers protecting us and watching and keeping the sidewalk clear. And we held the forum on subsequent nights—July 1st and then the next weekend—Friday and Saturday of the next weekend. In each case there were police officers there and there was no disturbance, and we held the forum." In describing the meeting defendant said, "A lot of people spoke and a lot of people—it's an open forum and we let anyone speak that wanted to speak".

There is no dispute as to the events preceding defendant's arrest on July 14, 1967. About 8:45 P.M. he stood on a 5-gallon can and began his talk. There was a large sign behind him and there was a shopping cart filled with pamphlets next to him. Four or five of his associates also spoke and distributed the pamphlets. A crowd of 100 to 200 persons gathered. The sidewalk was obstructed and pedestrians walked into the street to get around the crowd. About 11:00 P.M. the gathering had become loud and boisterous. Several servicemen in uniform argued with defendant and his friends about the policy in Viet Nam. One of defendant's associates reported a fight in the crowd to officer O'Malley. Two spectators tore down the sign and a person sympathetic to defendant picked it up. A fight was about to ensue over this incident when officer O'Malley appeared and calmed the situation. Some spectators then set fire to some leaflets. The plain-clothed officers finally dispersed the crowd and officer Highland instructed defendant to move also. Defendant got back on the can and said: "I will not move. You can arrest

me if you please." When told he was under arrest, defendant walked to the squad car without protest or incident.

Officer O'Malley testified he had witnessed about 500 demonstrations in the past two years and that in this demonstration the audience, in his opinion, had become agitated. Defendant admitted that the situation had become tense but he was willing to be attacked for the purpose of his cause.

Defendant argues that both ordinances are unconstitutional on their face because they are vague and prohibit conduct protected by the first amendment. This same challenge was leveled at this disorderly conduct ordinance in *City of Chicago* v. *Gregory*, 39 Ill. 2d 47, and at this "resisting or interfering" ordinance in *City of Chicago* v. *Lawrence*, 42 Ill. 2d 460, and we rejected the challenge in each case.

He then argues that neither ordinance can constitutionally be applied to his conduct. The issue he raises is whether the police can prevent him from speaking simply because his audience might react with disorder or violence. This issue, in the context of a demonstration, was raised in *Gregory*. After reviewing and analyzing several Supreme Court decisions, we concluded that the police may not "* * * stop a peaceful demonstration merely because a hostile crowd may not agree with the views of the demonstrators. It is only where there is an imminent threat of violence, the police have made all reasonable efforts to protect the demonstrators, the police have requested that the demonstration be stopped and explained the request, if there be time, and there is a refusal of the police request, that an arrest for an otherwise lawful demonstration may be made."

(39 Ill. 2d 47, 60.) Applying this rationale to the facts of the *Gregory* case we upheld the disorderly conduct convictions.

The Supreme Court reversed these convictions. (*Gregory* v. *City of Chicago*, 349 U.S. 111, 22 L. Ed. 2d 134, 89 S. Ct. 946.) That court observed that a peaceful and orderly march falls within the sphere of conduct protected by the first amendment. It then noted, as we did, that there was no evidence that the march was disorderly. It then concluded, as did we, that the disorderly conduct convictions could not be based on the manner in which the march was conducted.

The court next properly observed that our opinion held the demonstrators "were convicted not for the manner in which they conducted their march but rather for their refusal to disperse when requested to do so by Chicago police." However, because "The trial judge charged solely in terms of the Chicago ordinance" and "Neither the ordinance nor the charge defined disorderly conduct as the refusal to obey a police order" the court concluded that "* * * petitioners were charged and convicted for holding a demonstration not for refusal to obey a police officer." 394 U.S. 111, 947, 22 L. Ed. 2d 134, 136, 89 S. Ct. 946.

The Supreme Court neither approved nor disapproved of our conclusion that the police may order the cessation of otherwise lawful conduct where they have made all reasonable efforts to maintain order, but the conduct is producing an imminent threat of uncontrollable violence or riot. We adhere to the view expressed in our *Gregory* opinion that they may make such an order and that the demonstrators or speakers may be arrested and prosecuted for failure to obey such order.

(Supreme Court Opinion)

The interfering ordinance provides that "Any person who shall resist any officer of the police department in the discharge of his duties, or shall in any way interfere with or hinder or prevent him from discharging his duty as such officer * * * shall be fined not less than Ten nor more than One Hundred Dollars for each offense." The police officers on duty during this "Viet Nam Forum" had a duty both to maintain order and to safeguard first-amendment freedoms. As Justice Black observed, however, "* * * when groups with diametrically opposed, deep-seated views are permitted to air their emotional grievances, side by side, on city streets, tranquility and order cannot be maintained even by the joint efforts of the finest and best officers and of those who desire to be the most law-abiding protestors of their grievances." *People* v. *Gregory*, 394 U.S. 111, 89 S. Ct. 946, 950, 22 L. Ed. 2d 133, 139 (concurring opinion).

The record shows that defendant held his "forum" on several weekends and that the police officers were able to maintain order and to protect the right of defendant and his associates to express their views. The record also shows that on July 14, 1967, there was some violence and a threat of greater violence, that the police had tried to maintain order, and that they ordered the crowd to disperse only after the debate was degenerating to one of physical battle. Defendant was arrested when he wilfully refused to obey the order to disperse and attempted to continue the conduct which was producing the disorder. We hold that defendant was properly convicted of interfering with the police in the discharge of their duty to maintain order.

The conviction for disorderly conduct is subject to the same criticism the Supreme Court made in *Gregory*. The

record indicates to us that defendant was charged and convicted of disorderly conduct because of the manner in which he conducted his "forum".

For the foregoing reasons, the conviction for interfering with the police in the discharge of their duty is affirmed and the conviction for disorderly conduct is reversed.

Affirmed in part and reversed in part.

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Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE ILLINOIS SUPREME COURT.

BRIEF IN OPPOSITION.

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ON PETITION FOR WRIT OF CERTIORARI TO THE ILLINOIS SUPREME COURT.

BRIEF IN OPPOSITION.

QUESTIONS PRESENTED.

Whether there is any conflict of decisions as to the validity of Section 11-33 of the Municipal Code of Chicago?

Whether the record supports the trial court's finding that the petitioner interfered with a police officer in the discharge of his duties?

Whether the ordinance is vague and overbroad in its terms?

STATEMENT OF FACTS.

Prior to the date of arrest, the petitioner had been making speeches against the war in Viet Nam at the same location without incident (Rept. of Proc. pp. 38-39).[1] The police department knew of these speeches and detailed men there as a measure of precaution. There had been no arrest up to this time and there is no evidence showing that the police department had interfered in any way with the petitioner's speeches. The location of these speeches was in the middle of an area known as "Old Town"; which is highly congested and a well known tourist attraction (Rept. of Proc. pp. 25-29). The forum used was the public sidewalk which was about 12 feet wide at this point.

The undisputed facts disclose that on Friday, July 14, 1967, at about 8:45 P. M., the petitioner began speaking and attracting the attention of passers-by (Rept. of Proc. p. 12). He was accompanied by four or five sympathizers who also took turns speaking (Rept. of Proc. p. 15). The petitioner was standing on a five gallon can; he had a large sign behind him and there was a shopping cart filled with pamphlets to one side (Rept. of Proc. p. 12). A crowd of about 100 to 200 people had gathered, and the sidewalk was completely obstructed, and pedestrians in order to pass were required to walk into the street (Rept. of Proc. pp. 31, 35). About 11:00 P. M. the gathering became loud and boisterous. Two men who were aides to the petitioner came up to a policeman and told him there was a fight beginning to form within the group and that the sign behind the petitioner was pulled down and was being burned along with the pamphlets (Rept. of Proc. p. 17). A person sympathetic

1. Petitioner in citing authority for certain points has referred to the record by making the designation R. ..... It should be noted that the references cited are not to the record pages, but instead to the Report of Proceedings. Therefore all reference in the Brief in Opposition are to the Report of Proceedings.

to the petitioner picked it up, and a fight was about to ensue over this incident when Police Sergeant O'Malley appeared and calmed the situation (Rept. of Proc. pp. 40-42). Later some spectators came back and took the leaflets and set them on fire. It was only at this point that Sergeant O'Malley with aid of officer Highland and others ordered the crowd and the speechmakers to disperse (Rept. of Proc. pp. 17, 41). The petitioner was asked to leave but he refused saying "I will not leave. You can arrest me if you please" (Rept. of Proc. p. 33).

Sergeant O'Malley testified that he had been assigned to protect the demonstrators, that he had been present at some 500 demonstrations in the past two years and that in his estimation there was a diversion tending toward a breach of the peace (Rept. of Proc. pp. 16-17). The petitioner admitted there was a great tenseness in the crowd, but that he was not concerned about it because he believes in nonviolence (Rept. of Proc. p. 50). The petitioner also admitted that the crowd was hostile and the situation on July 14, 1967, was different from prior dates inasmuch as there were disturbances, near breakouts of fights and burnings (Rept. of Proc. pp. 48-49).

Petitioner was charged with violating Section 11-33 (interfering with a police officer) and Section 193-1 (disorderly conduct) of the Municipal Code of Chicago. Judgment was entered against the petitioner and fines of $200.00 for violating the disorderly conduct ordinance and $100.00 for violating the resisting arrest ordinance were imposed (Rept. of Proc. pp. 52-54).

On direct appeal to the Illinois Supreme Court the disorderly conduct judgment was reversed (See 193-1) but the finding that the petitioner had interfered with a police officer in the discharge of his duties was affirmed (Sec. 11-33). No petition for rehearing was filed in the Illinois Supreme Court.

REASONS FOR DENYING THE WRIT.

For the following reasons a writ of certiorari should not issue to review the decision of the Illinois Supreme Court:

I.

There Is No Substantial Federal Question Involved and No Conflict of Decisions on the Validity of Section 11-33 of the Municipal Code of Chicago.

In the Petition pending before this Court only one ordinance is being attacked by the petitioner. This is Section 11-33 of the Municipal Code of Chicago, which prohibits persons from interfering with a police officer in the discharge of his duties.

The constitutionality of this ordinance was first raised in the case of *City of Chicago* v. *Lawrence*, 42 Ill. 2d 461, decided May 28, 1969. In that decision the Illinois Supreme Court upheld the validity of the ordinance against arguments that it was vague and overbroad. That decision was appealed to this Court, and on November 17, 1969, after briefs were submitted by both sides, this Court, in treating the appeal as a Petition for Certiorari, denied the writ 396 U. S. 39 (1969).

The petitioner in attempting to persuade this Court to grant the writ, has cited and relies heavily upon the decision in *Gregory* v. *City of Chicago*, 394 U. S. 111 (1969). The petitioner properly states the reasoning used by this Court in reversing the Illinois Supreme Court, but fails to point out that the ordinance involved in that case was different than the one now under consideration. In *Gregory*, the defendants were charged with violating Section 193-1 of the Municipal Code of Chicago (disorderly conduct). Since the ordinance did not contain language making it a violation for refusing to obey a police officer's command to

disperse, any conviction under such an ordinance was improper. However, in the instant case the language of Section 11-33 of the Municipal Code of Chicago makes it clear that citizens are not to interfere with police officers in the discharge of their duty. Here the petitioner was not arrested because of the speech that he was making, but instead because he refused to obey a police officer's order to disperse at a time when violence had broken out and there was the threat of greater violence. This same type of police action has been sanctioned by this Court in *Feiner* v. *New York*, 340 U. S. 315 (1950).

The petitioner argues that the offense for which he was fined was not enumerated in the ordinance at the time of his arrest. Specifically he points out that his speech took place in July, 1967, and that he was tried the same month. Petitioner states that the Illinois Court's construction of this ordinance was not announced until more than two years later (Petition, p. 10).

Prior to the decision in *City of Chicago* v. *Lawrence*, 42 Ill. 2d 457 (May 28, 1969), *cert denied*, 396 U. S. 39 (November 17, 1969), the Illinois Supreme Court had not ruled on the constitutionality of Section 11-33 of the Municipal Code of Chicago. When this decision was handed down, it did not amount to a judicial enlargement of an existing ordinance but simply was a reasoned decision evaluating arguments on the constitutionality of the ordinance. The court's decision did not include any new types of conduct under the coverage of this provision, but stayed within the terms of the ordinance as drafted. The analogy which the petitioner attempts to draw to the case of *Gregory* v. *City of Chicago*, 396 U. S. 39 (1969) is completely without foundation in either law or fact.

II.

The Evidence in the Record Amply Supports the Court's Finding.

The record is absent any facts which show that the ordinance in question was applied to the petitioner so as to deprive him of his constitutional right of free speech and assembly. Prior to the date of arrest, the defendant had been making speeches against the war in Vietnam at the same location without incident. The police department knew of these speeches and detailed men there as a measure of precaution. There had been no arrests up to this time and there is no evidence showing that the police had interferred in any way with the petitioner's speeches. The location of these speeches was in the middle of an area known as "Old Town"; which is highly congested and a well known tourist attraction. The forum used was the public sidewalk which was about 12 feet wide at this point.

A crowd of about 100 to 200 persons gathered (Rept. of Proc. pp. 31, 35). About 11:00 p.m. the crowd had become loud and boisterous (Rept. of Proc. p. 31). The petitioner admitted that there was great tension in the crowd that night and that it was different from prior dates inasmuch as there were disturbances, near breakouts of fights, and burnings (Rept. of Proc. pp. 48, 49). Sergeant O'Malley an experienced officer who had previously attended 500 demonstrations was assigned to the crowd. He testified that two men who were aides to the petitioner came up to him and told him there was a fight beginning to form within the group and that the sign behind the defendant was pulled down and was being burned along with the pamphlets. One of the petitioner's sympathizers then came along and put it back up. Two spectators then tore the banner down for a second time. This angered the man who was holding the sign and a fight was about to ensue over

this incident when officer O'Malley appeared and calmed the situation. Some spectators then set fire to some leaflets (Rept. of Proc. pp. 40-42). It was only at this point that Sergeant O'Malley with the aid of other officers ordered the crowd and the speechmakers to disperse. The petitioner stated that the officers told him to move, but he refused and decided to remain. He informed the policemen that if they wanted to arrest him he would go with them.

From the above factual situation it is clear that the dialogue between the petitioner and the crowd created a tense situation. The audience reacted physically and there was present an imminent threat of continued violence. The acts of the police officers in arresting the petitioner were motivated solely by their concern for the preservation of order and protection of general welfare. The record lacks any evidence that the acts of the police were a "cover" for the suppression of defendant's views and opinions. This is manifested by the fact that on prior occasions no attempt was made to silence the defendant. The purpose of the police was not to prevent speeches, but rather to regulate the crowd that gathered to listen. The police officers had a duty to maintain order in the streets and the petitioner's repeated refusal to obey their command to disperse interfered with this duty.

III.

Section 11-33 of the Municipal Code of Chicago Is Not Vague and Overbroad.

The issue of whether the City of Chicago's interfering with a police officer ordinance is vague or overbroad in its terms has been raised and passed upon in the case of *City of Chicago* v. *Lawrence*, 42 Ill. 2d 461 (1969), *cert. denied*, 396 U. S. 39 (1969). The Illinois Supreme Court stated (p. 464):

> "As for the vagueness objection it is true that conduct prohibited by ordinance or statute must be described in terms definite enough to serve as a guide to those to whom it applies. But 'interfere with' and 'hinder' are not under all circumstances terms too indefinite to be applied. An ordinance may describe conduct by their use where the meaning is clear enough to people contemplating such behavior, the test being whether they convey sufficient definite warning as to proscribed conduct when measured by common understanding and practices (Cf. *Jaffe* v. *Cruttenden*, 412 Ill. 606). We do not think that under a reasonable construction the ordinance in the case at bar can be said to be unconstitutionally vague and indefinite. An ordinance or statute must be read in a sensible way, without giving necessarily general terms like 'interference' such a literal application as would lead to undue restrictions on speech or some other constitutionally protected conduct. No rule of construction requires the ordinance before us to be given an absurd effect which, although within its letter, is contrary to its spirit."

This same reasoning was adopted by the Illinois Supreme Court in the case at bar (Appendix p. 3A). The petitioner was found guilty under the terms of the ordinance as it existed at the time of his arrest. There was no newly-announced construction of the ordinance by the Illinois Supreme Court, as petitioner suggests (Petition, p. 12), but merely an application of the terms of the ordinance to the conduct of the petitioner.

CONCLUSION.

For the foregoing reasons it is respectfully submitted that the Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1969

No. 1223

KARL H. MEYER,

Petitioner,

vs.

CITY OF CHICAGO, a Municipal Corporation,

Respondent.

REPLY IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS

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REPLY IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS

Petitioner files this reply to respond to Respondent's reliance upon *City of Chicago* v. *Lawrence*, 42 Ill. 2d 461 (1969), cert. denied, 396 U.S. 39 (1969), and *Feiner* v. *New York*, 340 U.S. 315 (1950), and to answer Respondent's contention that the City's unlawful interference with defendants' protected free speech may be excused by the good faith of the police.

I.

City of Chicago v. *Lawrence*, 42 Ill. 2d 461 (1969), is a case of "hardcore conduct"[1] in which the defendants were convicted for affirmative actions unrelated to speech: continued pounding on the door of a police officer's house after twice being ordered to desist. *Lawrence* is thus in line with earlier decisions upholding convictions for conduct not speech or speech-related,[2] and is inapposite to the present case, where, as the Respondent concedes, (Brief p. 7) it was "the dialogue between the petitioner and the crowd" which led the police to take action against Petitioner.

Contrary to Respondent's contention (Brief, p. 7), *Lawrence* does not reach the issues of protected First Amendment speech and overbreadth. The Illinois Supreme Court, in *Lawrence*, dismissed those contentions as "hypothetical situations . . . in which . . . [defendants] suggest a person could violate the ordinance by engaging in 'constitutionally-protected' conduct." (42 Ill. 2d at 464) *Lawrence* does, however, hold that the Chicago ordinance

> "must be read in a sensible way, without giving necessarily general terms like 'interference' such a literal application as would lead to undue restrictions on speech or some other constitutionally protected conduct." (42 Ill. 2d at 463-464)

---

[1] See *Brown* v. *Louisiana*, 383 U.S. 131, 147-148 (1966) (Brennan, J. concurring).

[2] *People* v. *Turner*, 265 N.Y.S. 2d 841 (1965), affirmed 271 N.Y.S. 2d 829 (1966), cert. granted, 385 U.S. 917 (1966), writ dismissed as improvidently granted, 386 U.S. 273 (1967); *U. S.* v. *Woodward* 376 F. 2d 136 (7th Cir. 1967).

Yet, the decision below construes and applies the ordinance so as to restrict and abridge free speech, and is thus in conflict with *Lawrence* and the decisions of this Court in *Gregory* v. *Chicago*, 394 U.S. 111 (1969); *Cox* v. *Louisiana*, 379 U.S. 536 (1965); and *Edwards* v. *South Carolina*, 372 U.S. 229 (1963).

II.

Respondent (Brief, p. 7) takes the position "that the dialogue between the petitioner and the crowd created a tense situation [and] [t]he audience reacted physically and there was an imminent threat of continued violence" and (Brief, p. 5) attempts to justify the City's interference with Petitioner's protected free speech as "police action sanctioned by *Feiner* v. *New York*, 340 U.S. 315 (1950)." In *Feiner*, a speaker before a racially-mixed group urged the blacks to take up arms against the whites and fight for equal rights. This Court, holding that the speaker had passed the bounds of argument or persuasion and had undertaken "incitement to riot" (340 U.S. at 321), affirmed a conviction for disorderly conduct.

Respondent confuses incitement, *Feiner*, with free speech. Petitioner's actions were at all times peaceful and orderly, *Gregory* v. *Chicago*, 393 U.S. 111 (1969), and at no time did he engage in incitement or "fighting words", *Chaplinsky* v. *New Hampshire*, 315 U.S. 568 (1942). Free speech by its very nature invites dispute, "creates dissatisfaction with conditions as they are [Petitioner spoke, in 1967, against this country's involvement in the Viet Nam war], or even stirs people to anger." *Terminiello* v. *Chicago*, 337 U.S. 1, 4 (1949). Yet, on Re-

spondent's theory (Brief, p. 7), the First Amendment notwithstanding, free speech may be abridged, so long as the police act in good faith. But the paramount duty of the Respondent, and the police, was to protect Petitioner's "constitutional right to talk" (*Feiner*, 340 U.S. 315, 326, Black, J., dissenting), and to rule otherwise makes free speech subject to, and determined by, the violence of the opposition. See Kalven, *The Negro and The First Amendment* (1965) pp. 140-160.

Respondent relies on the majority opinion in *Feiner*, even though the Illinois Court's *per se* when-speech-may-be-interrupted rule, which is the basis for that Court's affirmance of Petitioner's conviction, is grounded upon the Illinois Court's interpretation of Mr. Justice Black's *dissent* in *Feiner*. *City of Chicago* v. *Gregory*, 39 Ill. 2d 47, 58 (1968). The Illinois rule, which Mr. Justice Black, joined by Mr. Justice Douglas, has recognized raises "troublesome questions" about the fragility of First Amendment rights (394 U.S. 111, 121-122), continues to be the law in Illinois notwithstanding this Court's reversal of the Illinois Court's *Gregory* decision (Appendix to Petition for Certiorari herein, p. 4a), and the Illinois rule will continue to be the law, and be used to abridge protected free speech, unless struck down by this Court in this case.

For the reasons set forth herein and in the Petition for Certiorari, Petitioner asks that this Court grant review and reverse the Court below.

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PETITION FOR REHEARING OF ORDER DENYING PETITION FOR A WRIT OF CERTIORARI

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WHY THE PETITION SHOULD BE GRANTED.

I. THIS COURT'S INTERVENING DECISION, AND SUBSTANTIAL AUTHORITY NOT PREVIOUSLY ARGUED, CONTROL THE SIGNIFICANT FREE SPEECH QUESTION RAISED AND REQUIRE REVERSAL.

In this case petitioner was giving a speech against the Viet Nam War while standing on a public sidewalk. He remained where he was when the police asked him to

leave and for doing so was later convicted of interfering with a police officer in the performance of his duties. Petitioner contends that the conviction is in violation of the protections guaranteed under the First Amendment. This Court denied a petition for a writ of certiorari, three Justices dissenting, on April 6, 1970. Subsequently, on April 20, 1970, this Court decided *Bachellar* v. *Maryland*, (No. 729, October Term, 1969), Brennan, J. Under the holding of the *Bachellar* case, the writ should be granted and the opinion below should be reversed. The same result should be reached under this Court's decision in *Street* v. *New York*, 394 U.S. 576, at 592 (1969), in an opinion of Mr. Justice Harlan, substantial authority for reversal not previously argued.

QUESTIONS PRESENTED.

A. Can a person who is engaged in free speech and who cannot be convicted for the speech itself, and who cannot be convicted for disorderly conduct for (a) refusing to move on at a police order, or (b) for the earlier disorder of his spectators, be convicted for interfering with a police officer on either of these grounds, where his conduct was the same under both charges?

B. Can a conviction stand on a general judgment order that could have been based either on (a) the unpopularity of words, or (b) the earlier disorder of spectators—but in any ~~case, where,~~ it is agreed that, petitioner did not engage in any conduct (i.e. whether picketing, demonstrating or sitting-in) but merely spoke?

ARGUMENT.

This free speech conviction should be reversed (1) under *Bachellar* v. *Maryland*, *supra*, and *Shuttlesworth* v. *Birmingham*, 382 U.S. 87 (1965), as defendant was convicted for failure to move on where there was no legal basis for the command, and/or (2) under *Street* v. *New York*, *supra*, and *Bachellar* v. *Maryland*, *supra*, as the conviction was or could have been based in whole or in part on the unpopularity of petitioner's free speech, or the earlier disorder of the spectators.

This is an important case of broad significance, for to allow the judgment below to stand is to hold that a speaker may be stopped by the whim of a police officer, particularly if he feels the speaker's lawful speech is unpopular, and because the decision below actually invites spectators who disagree with a speaker to become so unruly as to invite the police to order the speaker to leave. Thus, the decision below honors the heckler's veto of conduct protected under the First Amendment,(*) in conflict with the Court's decision in *Gregory* v. *City of Chicago*, 394 U.S. 111 (1969).

Bachellar was decided by this Court on April 20, 1970, and thus is intervening authority, because the decision of this Court in this case was on April 6, 1970. *Street* is also controlling, and is substantial authority available to petitioner, but not previously argued.

(*) Kalven, *The Negro And The First Amendment*, (1965), pp. 140-160.

Intervening Decision of This Court of Controlling Effect: Bachellar v. Maryland

Under What Circumstances, If Any, May a Speaker Constitutionally Be Convicted For Refusal to Obey Police Order to Move On?

The question presented by the instant case and which requires decision by this Court, is whether refusal to obey is constitutionally punishable when the person who refuses is speaking on public issues, and is not engaged in any other conduct.

In *Bachellar* v. *Maryland*, this Court reversed a conviction for disorderly conduct where one of the grounds in the charge to the jury defined "disorderly conduct" to be "refusal to obey a policeman's command to move on when not to do so may endanger the public peace."(*) The defendants in *Bachellar*, participants in an anti-war demonstration, were arrested while on the public sidewalk, after they had been expelled from a military recruiting station.(**)

(*) The Court below in the present case reached the same decision when it reversed petitioner's conviction, based on the same facts, for disorderly conduct.

(**) This Court noted that there was a conflict in the evidence as to whether petitioners were completely blocking the sidewalk This Court further noted that there were 50-150 people, including the demonstrators, in the area at the point of arrest. This Court noted that on the record in *Bachellar*, defendant's convictions could have constitutionally rested on a finding that the defendants sat on the sidewalk with the intent of fully blocking passage along it, or "that they refused to obey police commands to stop obstructing the sidewalk in this manner and move on." However, this Court held that because of the nature of the law under which defendants were charged, and because of the general verdict rendered by the jury, it was not possible to say that either of the above grounds was the basis for the verdict, and that defendants may have been convicted merely because defendants' views were offensive to some of their listeners.

In the present case it is agreed that petitioner neither intended to nor actually blocked anyone.

Thus, the question raised in the present case—*i.e.* whether failure to obey by a person who is engaged in free speech may be convicted where there had been some disorder by spectators—was touched on, but not decided, in either of these cases.

Bachellar, taken together with the earlier, *Shuttlesworth* decision, *supra*, opinion by Mr. Justice Stewart, establishes that (1) although a person constitutionally may be convicted for refusal to obey when he is blocking passage, (2) he may not be constitutionally convicted of failure to obey when he is simply standing on the sidewalk and there are no actual or potential consequences attached to his remaining or leaving.

Bachellar, as well as *Edwards* v. *South Carolina*, 372 U.S. 229 (1963), *Cox* v. *Louisiana*, 379 U.S. 536 (1965), *Terminiello* v. *Chicago*, 337 U.S. 1 (1949) and *Street* v. *New York*, *supra*, *Gregory* v. *City of Chicago*, *supra*, decided that constitutionally one could not be convicted for speech, although unpopular, annoying or offensive, so long as it is not inciting, *d. Feiner* v. *New York*, 340 U.S. 315 (1951), or provocative ("fighting words"), *Chaplinsky* v. *New Hampshire*, 315 U.S. 568 (1942), and even though the listeners to the speech caused a riot or near riot, *Gregory* v. *City of Chicago*, *supra*. There was no such conduct here.(*) The words themselves not being

(*) The Illinois Supreme Court mistakenly characterized the situation at the time of arrest as "degenerating to one of physical battle" (App. to Petition, p. 5a). But the record is otherwise, and this Court, where a claim of protected conduct has been made, must make an independent examination of the record, *Bachellar*. In so doing, this Court will find that, at the point of arrest, there was no disorder or other illegal activity on the part of the listeners, and only 20-30 people were present (R. 33):

> Q. And what, if anything, did Mr. Meyer do after you asked him to leave the area?

constitutionally punishable, it is not clear how a refusal to obey an order to stop speaking the same words can support a conviction. Or to put the point baldly: petitioner was convicted for free speech. The Illinois Supreme Court so said (App. 5a):

> "Defendant was arrested when he wilfully refused to obey the order to disperse and attempted to continue the conduct [speaking] which was producing the disorder."(*)

Can a person constitutionally ever be convicted where "the conduct" which he "attempt[s] to continue" is speech?

To answer this question in the affirmative means to (1) override this Court's decision in *Gregory* v. *City of Chicago*, and (2) to invite the unruly heckler to veto protected conduct.

---

cont.

A. He stood up on his can, or whatever it was, and crossed his arms and said, "I will not leave. You can arrest me if you please."

Q. Now, at that time did any people stand around or mill around, watching Mr. Meyer?

A. They stopped and watched the on-coming arrest.

Q. I see. Was there a large group that remained at that time?

A. No, sir.

Q. Approximately how many people had remained?

A. I would say approximately 20 to 30 people.

[Testimony by arresting officer.]

(*) Contrast the reversal (App. 6a) in the disorderly conduct conviction:

> ". . . defendant was charged and convicted of disorderly conduct because of the manner in which he conducted his 'forum'."

This point is discussed below in Point II.

II. REVERSAL IS REQUIRED BECAUSE PETITIONER'S "INTERFERENCE" CONVICTION MAY BE BASED ON HIS PEACEFUL AND ORDERLY SPEECH, OR ON THE DISORDER OF THE SPECTATORS.

Petitioner's conviction should be reversed because he may have been convicted for his speech, which is protected from conviction and punishment by the First Amendment, or because of the earlier action of his listeners, for which constitutionally he is not responsible. In *Street* v. *New York, supra,* and in *Bachellar* v. *Maryland, supra,* this Court reversed where convictions could have rested in whole or in part on the unpopularity of the content of the demonstrators' First Amendment conduct. The present case is stronger than either *Street* or *Bachellar.* First, petitioner was engaged in pure speech, there was no demonstration and no activity on his part where he intended to or did obstruct anyone or engage in any other physical act. In *Bachellar,* there was a sit-in and blockage. In *Street,* there was the physical act of burning the flag. Second, in *Bachellar* and in *Street,* there was evidence that could have been read to support a constitutional conviction, and evidence that could have been read to find that the conviction was based on First Amendment protected activity. In the present case there is no such ambiguity and no such alternative interpretation. The "conduct" which petitioner attempted to continue, Illinois Supreme Court Opinion, Pet. for Cert., App. 5a, was speaking words. The Court below recognized both of these factors in reversing the disorderly conduct conviction, but failed to do so when dealing with the conviction for "interfering."

The conduct requisite for conviction under the Chicago "interfering" ordinance is interfering with or hindering a police officer in the discharge of his duties. The record shows (and the Court below agrees) that there was no physical interference on petitioner's part. He merely remained standing and speaking after being told to leave. Hence, any "interference" by petitioner must lie in his speech or in his inaction of not leaving.(*)

With respect to petitioner's conviction for disorderly conduct, the Illinois Court, following this Court's opinion in *Gregory*, recognized that the "speech" ground was immunized from the conviction and punishment by the First Amendment, and that a conviction on that basis could not stand. It, therefore, reversed the disorderly conviction (App. 5a-6a):

> "'The conviction for disorderly conduct is subject to the same criticism the Supreme Court made in *Gregory*. The record indicates to us that defendant was charged and convicted of disorderly conduct because of the manner in which he conducted his 'forum'."

(*) It is unlikely that any "conduct" of petitioner was unlawful, as he was engaged solely in speech. However, for purpose of argument and analysis, it would appear that his "conduct" can be broken down as follows: (1) petitioner's speech on the merits (ideas about the Viet Nam War), (2) his words of refusal to leave, and (3) his inaction of not leaving. But, in any event it is not possible from the record to determine which of these elements was, in the trial court's mind, the basis for the finding of guilty. Indeed, it appears that a combination of these elements formed the basis for the finding, constitutionally impermissible under *Bachellar* and *Street*.

> "The Court: By his own testimony and his own admission, the defendant admits he was asked to leave, and he decided not to leave. He asked to be arrested instead.
>
> By his own admission, he got back onto this can—whatever it was—and kept on talking. It is the considered opinion of this Court that defendant is guilty . . ." (R. 54)

Precisely the same analysis requires reversal of the "interfering" conviction. It is no more possible to determine with respect to the "interfering" conviction whether it is grounded in petitioner's speech itself or in his inaction in not leaving but remaining to continue to speak(*) than it is possible to make such determination with respect to the "disorderly" conviction. The trial court's finding of guilty was given in general terms, and as the Illinois Court notes, petitioner's arrest, for both charges, was not made until after he had refused to disperse and had "attempted to continue the conduct [*i.e.* speech] which was producing the disorder." App. to Pet. for Cert., 5a. Yet, to the extent the "interfering" conviction is based on the "speech" element alone, or the "speech" element in combination with any of the other elements, petitioner has been convicted for speech, a ground upon which the conviction constitutionally may not rest.

(*) [The arresting officer]: (R. 34)

A. Then I then proceeded to arrest Mr. Meyer.

Q. When you placed Mr. Meyer under arrest what, if anything, transpired?

A. He very slowly, procession-like, walked to the squad car.

Q. When you told him he was under arrest did you advise him that he was to come into your custody?

A. Yes, sir. "You are under arrest. You will come with me."

Q. Did he go with you?

Did he voluntarily get off the stand and walk to the police car?

A. Yes, he did.

CONCLUSION.

This Court should grant this petition and reverse the conviction below, and in doing so, protect the right of free speech.

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